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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ROBERT MITCHELL,

9 Plaintiff,

10 v.

11 CORRECTIONAL OFFICER INI
12 GILBERT, et al.,

13 Defendants.

Case No. C09-5080BHS

ORDER OVERRULING
PLAINTIFF'S OBJECTIONS AND
ADOPTING REPORT AND
RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation of the
15 Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 29), Plaintiff's
16 Objections to the Report and Recommendation (Dkt. 31), Plaintiff's motion for hearing
17 (Dkt. 32), and Plaintiff's motion to continue (Dkt. 33).

18 On April 30, 2008, Plaintiff filed a civil rights complaint in the United States District
19 Court for the Eastern District of Washington. Dkt. 1. This action was later transferred to this
20 Court. Dkt. 25. On February 25, 2009, the Clerk's Office sent Plaintiff a letter advising him
21 he needed to provide service copies of the complaint and fill out Marshal's service forms.
22 Dkt. 27. The letter gave Plaintiff until March 30, 2009, to provide the needed service
23 documents. Plaintiff did not file the requested service documents.

24 On April 20, 2009, Judge Creatura recommended that the Court dismiss without
25 prejudice Plaintiff's claims for failure to provide service documents and failure to prosecute.
26 Dkt. 23 at 2.

1 On April 28, 2009, Plaintiff filed objections to the Report and Recommendation. Dkt.
2 31. Plaintiff maintains that he did send summons and notice to serve summons before April
3 9, 2009, but mistakenly included the wrong case number. *Id.* at 1. Plaintiff states that he
4 “will enclose a corrected summons and notice to serve summons with this objection.” *Id.*
5 Attached to Plaintiff’s objections is a document entitled “summons.” Plaintiff also stated that
6 he did not receive any Marshal forms for this case, and asks that the Court accept the
7 summons and notice to serve summons and serve the documents to Defendants.

8 On April 28, 2009, Plaintiff filed a motion requesting a hearing. Dkt. 32. Plaintiff
9 also requested that the Court serve the summons on the Defendants. *Id.* On May 13, 2009,
10 Plaintiff again requested a hearing. Dkt. 33. Plaintiff also stated that his second copy of
11 summons was sent in March and that he has received no response. Finally, Plaintiff
12 requested a continuance.

13 Federal Rule of Civil Procedure 4(m) indicates that if service of a summons and
14 complaint is not made within 120 days of filing the court shall dismiss without prejudice
15 unless the plaintiff can show good cause why service was not made within that time.
16 Ignorance of the rules is not good cause. *Townsel v. County of Contra Costa*, 820 F.2d 319,
17 320 (9th Cir. 1987).

18 The Court adopts the Report and Recommendation. Plaintiff filed this action in April
19 2008 and has never served copies of the complaint. Plaintiff was advised by the Court that
20 he had until March 30, 2009, to provide copies of the amended complaint, and was advised
21 that the clerk’s office would not make copies for him. Dkt. 27. He was also advised that he
22 needed to provide the Clerk with the full name and address of the named Defendants. *Id.*
23 The letter indicated that the appropriate forms were enclosed. The Court also notes that
24 Plaintiff previously received Marshal forms. *See* Dkt. 3.

25 Plaintiff has not provided the Court with copies of the complaint or the full names
26 and addresses of the named Defendants. As a result, he has not taken the necessary steps to
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1 allow the Court to attempt service on Defendants. Plaintiff included a summons in his
2 objections, but still has not provided copies of the amended complaint.

3 While Plaintiff maintains that he did provide his “second copy of summons,” he does
4 not maintain that he attempted to provide the requested copies of the amended complaint,
5 nor has he attempted to provide the requested address information of the Defendants.


6 Plaintiff has been provided the opportunity to correct these deficiencies, but has not
7 done so.

8 The Court having considered the Report and Recommendation, Plaintiff’s objections,
9 and the remaining record, does hereby find and order:

- 10 (1) The Court **OVERRULES** Plaintiff’s objections;
- 11 (2) The Court adopts the Report and Recommendation (Dkt. 29);
- 12 (3) The Court denies Plaintiff’s motions requesting hearings and motion for
13 continuance (Dkts. 32 and 33); and
- 14 (3) This action is **DISMISSED WITHOUT PREJUDICE** for failure to
15 prosecute.

16 DATED this 8th day of June, 2009.

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BENJAMIN H. SETTLE
United States District Judge